XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

068

आदेश पत्रक

मामला क्रमांक WP 211/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	25-1-2006 Shri Sushil Dubey, counsel for the petitioner. Shri Yashwant Singh, Govt. Adv., for the State. Shri R.K. Soni, Superintending Engineer, Water Resources Department, Bilaspur and Shri Indrajeet Uikey, Executive Engineer, Water Resources Department, Bilaspur are also present with the record of the case. Heard. Order dictated. Typed Separately. Signed and dated. Sd/- Fakhruddin Judge	

[पीछे देखिये

23.1.06

SINGLE BENCH

(1)

P.R. No. 242/06
Presented by Sushil Dubey
dated 16/1/06

c.s. 1001

003

IN THE HONOURABLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 241 OF 2006

PETITIONER

N. K. Tikariha, aged about 58 years, Son of Late Shri S. R. Tikariha, Occupation-Service, Presently posted as Executive Engineer, Water Resources Department, Division NO.1, Ambikapur, District Surguja (C.G.).

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through: The Principal Secretary, D.K.S. Bhawan, Mantralaya, Raipur (C.G.).

2. The Deputy Secretary, Water Resources Department, D.K.S. Bhawan, Mantralaya, Raipur (C.G.).

3. The Engineer in Chief, Water Resources Department, Sihawa Bhawan, Raipur (C.G.).

4. The Chief Engineer, Hasdeo Basin, Water Resources Department, Bilaspur (C.G.).

5. The Collector, District Surguja Ambikapur, (C.G.).

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16.1.06
CLERK TO A. G. BILASPUR

16/1/06

(2)

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6. The Chief Executive Officer, Zila Panchayat, Surguja, Ambikapur (C.G.).

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA, 1950 FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR APPROPRIATE ORDER/ORDERS, DIRECTION/DIRECTIONS.

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.241/2006

N.K. Tikariha

Vs.

State of C.G. & ors.

Shri Manindra Shrivastava, Sr. Advocate, with Shri Sushil Dubey, counsel for the petitioner.

Shri Yashwant Singh, Govt. Adv., for the State.

Shri R.K. Soni, Superintending Engineer, Water Resources Department, Bilaspur and Shri Indrajeet Uikey, Executive Engineer, Water Resources Department, Bilaspur are also present.

ORDER

With consent, heard finally.

2. The present petition has been preferred by the petitioner challenging the order dated 9/1/2006 (Annexure-P/1) passed by respondent no.2, whereby he has been suspended on account of irregularities in construction of Jajga Pond, Block Udaipur, District Sarguja.

3. The petitioner is Executive Engineer posted under Water Resources Department, Division No. 1, Ambikapur, District Sarguja. Learned counsel for the petitioner pointed out that the Collector Sarguja vide order No. Vikas, N.F.W.P./2004-05/237/ dated 3-12-2004 granted permission for construction of a new pond at Village Jajga, Block Udaipur under the National Food for Work Programme amounting to Rs. 7 lacs. It is submitted that the petitioner has inspected 117 works in 7 Blocks in Sarguja District. Counsel submitted that on a complaint regarding construction of Jajga pond, an enquiry was made and Shri R.K. Mishra, Sub-Engineer was suspended on 1-7-2005.

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4. Counsel for the petitioner referred to charges levelled against Shri R.K. Mishra, Sub Engineer. It is appropriate to reproduce the charges against Shri R.K. Mishra :-

"आरोप कमांक: 1

विकास खण्ड उदयपुर के ग्राम जजगा में राष्ट्रीय काम के बदले अनाज योजना के अन्तर्गत स्वीकृत रूपये 8.00 लाख का नवीन तालाब निर्माण कार्य अपचारी सेवक के तकनीकी निर्देशन एवं पर्यवेक्षण में विभागीय रूप से कराया जा रहा था। उक्त तालाब निर्माण कार्य में अपचारी सेवक के द्वारा वास्तविक व्यय राशि से रूपये 144855.00 का अधिक मूल्यांकन कर शासन को क्षति पहुंचाकर शासकीय राशि का गबन किया गया है जो कदाचरण की श्रेणी में आता है।

आरोप कमांक: 2

जजगा तालाब निर्माण कार्य का अपचारी सेवक के द्वारा अंतिम मूल्यांकन दिनांक 18/3/2005 तक किया गया है। इसके पश्चात किये गये कार्य का अपचारी सेवक के द्वारा साप्ताहिक मूल्यांकन माप पुस्तिका में दर्ज न कर मनमानी तरीके से फर्जी मस्टर रोल तैयार किया जाना पाया गया है। इस प्रकार अपचारी सेवक अपने कर्तव्य से विमुख होकर शासकीय नियमों की अवहेलना कर मनमानी तरीके से शासकीय कार्य सम्पादित किया गया है जो छत्तीसगढ सिविल सेवा (आचरण)नियम–1965 के नियम–3 का उल्लंघन किया गया है।

आरोप कमांक:3

जजगा में तालाब खनन कार्य में जिन मजदूरों द्वारा मजदूरी की गई है उन्हें चावल का कूपन प्रदाय नहीं किया गया है। साथ ही उन्हें नगद राशि भी नहीं दी गई है।मजदूरी के अनुपात में नगद राशि के साथ खाद्यान्न भी उन्हें नहीं दी गई है। कुछ मजदूरों को खाद्यान्न के साथ नगद राशि न देकर केवल चांवल(खाद्यान्न)ही दिया गया है। इस प्रकार राष्ट्रीय काम के बदले अनाज योजना के दिशा निर्देशों के अनुसार मजदूरी भुगतान न कर अपचारी सेवक द्वारा मनमानी तरीके से मजदूरी भुगतान किया गया है। इस प्रकार शासकीय राशि की हेराफेरी कर अपचारी सेवक के द्वारा गबन किया गया है जो कदाचरण की श्रेणी में आता है।

आरोप कमांक:4

राष्ट्रीय काम के बदले अनाज योजना के दिशा निर्देश के विपरीत कार्यालय प्रमुख(कार्यपालन अभियंता) से सत्यापित कराये बगैर निर्माण कार्य में आपके द्वारा मस्टर रोल का उपयोग किया गया है। इस प्रकार अपचारी सेवक की पूरी कार्यप्रणाली संदिग्ध प्रतीत होती है।"

5. Counsel for the petitioner submitted that the Collector issued charge sheet on 3-9-2005 to the petitioner. The charges against the petitioner are:-

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"आरोप कमांक:1

राष्ट्रीय काम के बदले अनाज योजना के अंतर्गत विकासखण्ड उदयपुर के ग्राम जजगा में स्वीकृत रूपये 8.00 लाख की नवीन तालाब निर्माण कार्य आपके प्रशासकीय एवं वित्तीय नियंत्रण में विभागीय रूप से कराया जा रहा था।आपके द्वारा समय समय पर निर्माण कार्य का आकस्मिक निरीक्षण एवं भेंट दी गई, उक्त तालाब निर्माण कार्य में श्री आर0के0मिश्रा, उप अभियंता द्वारा की गई अधिक राशि के मूल्यांकन का जांच/सत्यापन के बिना आपके द्वारा भुगतान की स्वीकृति प्रदान की गई।

आरोप कमांक:2
आपके द्वारा नवीन तालाब कार्य के निर्माणाधीन अवधि में समय समय पर आकस्मिक निरीक्षण किया गया है। श्री आर0के0मिश्रा उप अभियंता द्वारा राष्ट्रीय काम के बदले अनाज योजना के प्रशासकीय स्वीकृति में निहित शर्तो के अधीन एवं योजना के मार्गदर्शिका के अनुसार अद्यतन मूल्यांकन न करने की दशा में अपचारी अधिकारी के विरूद्ध आपके द्वारा किसी प्रकार की अनुशासनात्मक कार्यवाही न कर, उन्हें अनियमित कार्य करने हेतु प्रोत्साहित किया।

आरोप कमांक:03

जजगा नवीन तालाब खनन कार्य में जिन मजदूरों द्वारा मजदूरी की गई है, उन्हें श्री आर0के0मिश्रा, उपअभियंता द्वारा चांवल का कूपन प्रदाय नहीं किया गया, साथ ही उन्हें नगद राशि भी नहीं दी गई है, अर्थात मजदूरों को मजदूरी के अनुपात में नगद राशि एवं खाद्यान्न का भुगतान नहीं किया गया, जबकि खाद्यान्न का कूपन एवं नगद राशि आपके द्वारा अनुविभागीय अधिकारी श्री के0एस0धुर्वे के माध्यम से प्रदाय किया गया है। उपसभाग से प्राप्त लेखा विवरणिका में दर्ज खाद्यान्न एवं नगद राशि के अनुपात में खाद्यान्न का कूपन भी जांच/परीक्षण आपके द्वारा कर लेने के पश्चात आगामी भुगतान की स्वीकृति प्रदान किया जाना चाहिए था किन्तु इन वित्तीय नियमों का पालन न कर शासकीय राशि की हेराफेरी/गबन में आपके द्वारा परोक्ष भूमिका निभाई गई है, जो अपराधिक कृत्य की श्रेणी में आता है।

आरोप कमांक:04

तकनीकी विभाग के नियमों के अनुसार जिला पंचायत से प्राप्त मस्टर रोल को आपके द्वारा पंजी में पंजीबद्ध किए जाने के उपरांत तिथियुक्त हस्ताक्षर सहित प्रमाणीकरण करने के उपरांत उपसंभाग को जारी किया जाना चाहिए किन्तु उक्त निर्देशो का पालन न कर आपने शासकीय राशि के गबन में परोक्ष रूप से श्री के0एस0धुर्वे, अनुविभागीय अधिकारी एवं श्री आर0के0मिश्रा, उप अभियंता के साथ अपनी सहभागिता निभाई है। इस प्रकार आपकी कार्यप्रणाली एवं शासकीय निष्ठा संदिग्ध प्रमाणित होती है।

इस तरह आपके द्वारा छ0ग0सिविल सेवा(आचरण)नियम–1965 के नियम–3 के (एक) (दो) एवं (तीन) तथा नियम–3(क) के (ख) का उल्लंघन किया है।"

6. Counsel submits that as per para 4.010 of the W.D. Manual Vol. 1, the payments must be made by the Sub Divisional Officer in all cases. However, the Executive Engineer may authorize any other S.D.O. or Assistant Engineer (Attached Officer) to make payments when the concerned S.D.O. is not in a position to make payments or when the Executive Engineer desire so. He further contended that as per Para 4.023 of Manual Vol.I of W.D. Manual, the Sub-Divisional Officer and then Sub Engineer are responsible for all the works done.

7. Learned counsel for the petitioner submitted that against Shri R.K. Mishra, Sub Engineer, charge sheet was issued and he was suspended. Thereafter, an enquiry was held and as per the enquiry report (Annexure-P/9), none of four charges have been proved against him and he was reinstated on 10/10/2005 vide Annexure-P/2. Learned counsel further submits that the allegations against Shri R.K. Mishra were substantive whereas the charge against the petitioner is that he did not properly supervise the working of Shri R.K. Mishra. It is contended that once Shri R.K. Mishra himself has been exonerated and reinstated, there is no case against the petitioner for enquiry or suspension. It is also contended that the suspension order has been passed just to malign the image of the petitioner in the society when his daughter's marriage is to solemnize on 26/1/2006 and the invitation cards have been distributed.

8. On the other hand, learned counsel for the State supported the suspension order and submitted that so far as the enquiry and exoneration of Shri R.K. Mishra is concerned, this fact is not disputed in view of the enquiry report (Annex.P/9). Learned State Counsel fairly stated that the enquiry report has been acted upon and Shri R.K. Mishra who has been suspended has been reinstated. Learned Govt. Advocate submitted that at two different levels the matter was considered. It is further submitted that the fact that the substantive Officer has been exonerated

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has not been considered. He however submits that since the enquiry is at two different levels, it will not be such as to vitiate the suspension.

9. Learned State counsel raised a question about the maintainability of this petition on the ground that alternative remedy is available. Whereas learned counsel for the petitioner contended that there is no absolute bar and the remedy is not expeditious and efficacious in view of the special facts and circumstances of the case inasmuch the suspension order has been passed after distribution of the marriage cards of petitioner's daughter so as to malign his image in the society. Normally the Court does not interfere in the case where alternative remedy is available, but in the exceptional and special facts and circumstances like in the present case, where the action is selective, arbitrary and in violative of Article 14 of the Constitution of India, as held by this Court in a decision in the case of ***K.P. Chandrawanshi –v- National Thermal Power Corporation Limited and others*** reported in ***2004(1)C.G.L.J. 268***, this Court may interfere. Para 17 of the decision is relevant and quoted below:-

> *"17. In this connection, the settled law is that the question of alternative remedy is rule of discretion and not the rule of law. The Hon'ble Apex Court in the matter of ABL International Limited and another vs. Export Credit Guarantee Corporation of India Limited and others held that,*
>
> > *'While entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, as a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power (See : Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless much action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."*

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Therefore, in the opinion of this Court, it is a case where it is just, expedient and necessary to examine the matter.

10. During the course of hearing, the enquiry report (Annex.P/9) was read over by the counsel. Reference was made to page 38 of the writ petition (internal page 7 of the enquiry report). A perusal of enquiry report shows that on all the 4 charges, Shri R.K. Mishra has been exonerated.

11. Learned counsel for the petitioner contended that the suspension order has been passed as a result of 'suspension syndrome'. Present is a case where the petitioner has been suspended just for nothing. It is further contended that it is an Officer's irritability rather than the employees' trivial lapse which has resulted in suspension. Reliance is placed upon the judgment of the Apex Court in the case of ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another (1999) 3 SCC 679*** (Para 29).

12. So far as suspension is concerned, it is well settled that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending enquiry or contemplated enquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be enquired into or investigated and the nature of the evidence placed before the appointing authority and on application of mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. In the instant

case, it has been done otherwise. Reliance is placed upon the judgment of the Apex Court in the case of ***State of Orissa vs. Bimal Kumar Mohanty (1994) 4 SCC 126***. In this connection para 13 of the judgment is relevant and quoted below:-

> *"13. It is thus settled law that normally when appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."*

13. Learned counsel also placed reliance upon the judgment of Apex Court in the case of ***K. Sukhendar Reddy vs. State of A.P. & Another (1999) 6 SCC 257*** and contended that it is a discriminatory and selective suspension. He referred to paras 6 & 8 of the said judgment, which are quoted below:-

> *"6. The appellant was placed under suspension on 6-2-1997 by an order passed by the Chief Secretary to the Government of Andhra Pradesh under*

sub-rule (1) of Rule 3 till the completion of the disciplinary proceedings against him. This order was subsequently replaced by another order passed on 12-3-1997, in which it was clearly spelt out that disciplinary proceedings against the appellant were not at all contemplated, but since he was involved in Crime Case No.327 of 1996 registered under sections 468, 471, etc. by Anakaplli Town Police Station, he was being placed under suspension. This matter is still under investigation by the CID and a charge sheet has not yet been filed in the case.

8. We, therefore, allow this appeal and set aside the suspension order dated 12-3-1997 with the direction that the appellant shall be put back to duty and shall be paid all his arrears of salary up to date minus the suspension allowance, if any, already paid to him, leaving it open to the State Government consider the feasibility of placing the appellant under suspension, if and when a charge-sheet is filed by CID."

14. It is borne out from the record that the substantive responsibility in the instant case is of Sub Engineer Shri R.K.Mishra. The charges levelled against him have been reproduced in para 4 of the petition. Charge sheet was issued and an enquiry was held and enquiry report is Annexure P-9. Annexure P-9 is a detailed report wherein the entire material collected has been considered. After elaborately discussing, none of the 4 charges have been held to be proved against Shri Mishra. The Charges against the petitioner are reproduced in para 5 of this order. All the charges are like that he helped Shri R.K. Mishra and the Sub Divisional Officer in committing irregularity. There is great force in the contention that when after enquiry charges have not been proved against Shri Mishra and he has been exonerated and there is no other material against the petitioner, the suspension order has been mechanically passed holding that the petitioner is guilty. The finding recorded in the enquiry report in respect of Shri R.K. Mishra has not admittedly been considered in the petitioner's case. Shri Singh, learned State Counsel was pointedly asked and he only stated that since the enquiries were held at two levels, this has occurred. It has been held in ***State of Orissa (supra)*** that suspension has to be after taking into consideration the gravity of the misconduct sought to be enquired into or investigated and the nature of the evidence placed before the appointing authority and on application of mind by the disciplinary

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authority. It should not be as an administrative routine or an automatic order to suspend an employee. In the instant case, Enquiry Report Annexure P-9 has not at all been considered. Though report was lodged but substantive allegation is against Shri R.K. Mishra and he has been reinstated. Learned Government Advocate was also questioned about Annexure P-9. He submits that Annexure P-9 has been accepted in the case of Shri R.K. Mishra and he has been reinstated. It is a case where Annexure P-9 has been accepted in respected of charges against Shri R.K. Mishra, Sub Engineer but in respect of the charges against the petitioner, the same report has not been considered. Had it been considered in the case of petitioner also, he might not have been held guilty as the substantive allegation was against Shri Mishra. There is nothing on record that the Enquiry Report Annexure P-9 has been challenged. Learned Government Advocate is not able to point out any document and nothing has been placed on record regarding non-supervision or otherwise by the petitioner.

15. In view of the discussions made in earlier paragraphs and especially the fact that the substantial officer has been exonerated from the charges and reinstated, the suspension order dated 9-1-2006 (Annexure-P/1) is discriminatory and selective and it is not sustainable and is accordingly set aside.

16. Learned counsel for the State submitted that liberty be given to the State to consider the case and as and when any material is collected or challan is filed, the State may proceed in accordance with law. Liberty as prayed for, is granted. It is further made clear that the observations made hereinabove are relating to suspension order on the basis of material placed on record. They are not the expression of any opinion on the merits or otherwise of the Department Enquiry or the investigation pending before the investigating Agency. Those proceedings will be conducted and decided on their own merits and it will be open to the competent

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authority that as and when the State gets any material or the challan is filed by the police, the case may be considered on its own merits in accordance with law.

17. Subject to what has been stated above, the petition stands disposed of. Consequently, pending applications, if any, also stand disposed of.

Sd/-
Fakhruddin
Judge

HP/-